

Award No. 11574

Docket No. TE-10143

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Cincinnati, New Orleans and Texas Pacific Railway that:

1. The Carrier violated the agreement between the parties when it failed and refused to pay C. E. Storey, Agent-Telegrapher at Oneida, Tennessee, for overtime worked on December 8, 15, 19, 21, 22, 1956, January 18, 26, 31, 1957.

2. Carrier shall compensate C. E. Storey at the overtime rate as follows: December 8, one hour 30 minutes; December 15, one hour 30 minutes; December 19, one hour 15 minutes; December 21, one hour 20 minutes; December 22, one hour; January 18, one hour; January 26, one hour; January 31, one hour 15 minutes.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Oneida, Tennessee is a station on this Carrier's lines. There is one position of Agent-Telegrapher at the station with assigned hours from 7:00 A. M. to 4:00 P. M. (one hour meal period). This is a six day position with Sunday as the one assigned rest day.

The duties of the position are those generally and normally associated with that of Agent-Telegrapher. Briefly they are handling bills of lading, way bills and expense bills in connection with the freight business, selling tickets, handling mail, baggage and express to and from trains and the communication work (train orders and messages); also the accounting and reports in connection with the business transacted at the station.

On December 8, 1956, Claimant Storey worked one hour 30 minutes overtime; on December 15, 1956 one hour 30 minutes overtime; on December

Board for want of jurisdiction. The remainder, relating to the monetary demand, should be denied.

All evidence here submitted in support of Carrier's position is known to Employe representatives.

Carrier, not having seen the ORT's submission, reserves the right after doing so to make appropriate response thereto.

OPINION OF BOARD: It is the contention of the Claimant Storey that a part of his assigned duties is the handling of train orders and messages whenever the occasion requires such service; that, consequently, the position which he holds should be classified according to the duties performed within the meaning of Rule 1(b) of the Agreement which provides, that "employees will be classified according to duties performed." he contends, further, that when the communication work of handling train orders and messages became a part of the duties of a Station Agent he immediately became an Agent Telegrapher and under Rule 9 of the Agreement he was entitled to overtime for work in excess of eight (8) hours per day.

The Carrier asserts that there has been no position of Agent-Telegrapher at the station at Oneida, Tennessee for twenty years and, further, that there has been no change in the duties required of a Station Agent at that point since Claimant Storey went on the job as a Station Agent in May, 1947; Carrier further maintains this is a monthly rated position with assigned hours 7:00 A. M. to 4:00 P. M. and Rule 9 as to overtime for hourly rated positions does not apply; it is Carrier's contention that the Station Agent was to perform all duties assigned him, that there was very little occasion for the Agent to handle train orders, as they were issued only in connection with unusual situations or in cases of emergency.

At the time of the Effective Agreement, September 1, 1949, the employe at Oneida, Tennessee, was in accordance with Rule 1(b) rated as a Station Agent and was to be paid as a Station Agent as evidenced by the Agreement Rules.

The listing of the position in the Agreement discloses the following: "Oneida . . . Sta Agt . . . \$370.73 (month)"

"The listing of positions, with locations and rates of pay, is for the purpose of showing the established rates of pay of existing positions, effective as of September 1, 1949 * * * * *"

It is conceded by the Petitioner that this is a monthly rated position, it is also conceded that the duties at the time of the alleged violation were the same as they were when the Agreement was entered into. It is further conceded that this Board has no authority to re-classify positions—that it is a matter of negotiation between the Carrier and the Petitioner. This is an attempt to persuade us to do something indirectly that we are powerless to do directly. The claims should be disallowed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement has not been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1963.